

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2008-144
)	
Carolina Exterminating)	
)	
)	
Trident Technical College)	POSTING DATE:
IFB No. 071008-910-147RT-07/30/08)	
<u>Pest Control Services</u>)	January 16, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Carolina Exterminating. With this invitation for bids (IFB), Trident Technical College (TTC) attempts to procure pest control services for all buildings of its three campuses. In the letter, Carolina Exterminating protested TTC's award to Clegg's Pest Control (Clegg's) alleging that it, not Clegg's, was the low bidder. Carolina Exterminating alleged that it offered a price of \$11,900 while Clegg's, the awarded bidder, offered a price of \$12,800.

In order to resolve the matter, the CPO conducted a hearing January 8, 2009. Appearing before the CPO were Clegg's, represented by Gene Wall; and TTC, represented by Carol Belcher, Procurement Manager. Carolina Exterminating did not appear.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On July 14, 2008, TTC issued the IFB. [Ex. 2]
2. On July 22, 2008, TTC issued Amendment No. 1, the only amendment to the IFB. [Ex. 3]

3. On August 11, 2008, TTC opened the following bids:

<u>Bidder</u>	<u>Bid Amount</u>
C-Mac Pest Control	\$9,975.00
Green's Exterminating	12,000.00
Clegg's	12,816.00
Carolina Exterminating	12,981.60
Dodson Brothers Exterminating	15,708.00
Gregory Pest Control	29,166.72

After applying the resident vendor preference, the amended bids were as follows:

C-Mac Pest Control	\$10,673.25
Green's Exterminating	12,840.00
Clegg's	13,713.12
Carolina Exterminating	13,890.31
Dodson Brother's Exterminating	15,708.00
Gregory Pest Control	29,166.72

[Ex. 5]

4. On September 30, 2008, after rejecting C-Mac Pest Control's bid as nonresponsive and Green's Exterminating as a non-responsible bidder, TTC posted a statement of award to Clegg's. [Ex. 6]

5. On October 10, 2008, the CPO received Carolina Exterminating's protest.

CONCLUSIONS OF LAW

According to Bob Tyner, TTC Procurement Officer, he rejected the bid of C-Mac Pest Control as nonresponsive. C-Mac has not protested TTC's rejection of its bid. Therefore, the CPO did not investigate this matter fully. According to Mr. Tyner, Carolina Exterminating made several extension errors in its bid; one that was significant. According to Mr. Tyner, Carolina Exterminating bid a price of \$92.57 per month with an extended (annual) price of \$111.09 (instead of \$1,110.84) for Building 600—an obvious bidding error in his opinion. During evaluation of the bids, Mr. Tyner recalculated Carolina Exterminating's bid and determined that their actual total bid was \$12,981.60, not \$11,900, as submitted by Carolina Exterminating. According to Mr. Tyner, he discussed the bidding error with Drew Leilich of Carolina

Exterminating October 8, 2008, prior to Carolina Exterminating filing its protest. See his memorandum documenting his conversation at Ex. 8.

As noted above, Carolina Exterminating did not attend the hearing to perfect its protest. Therefore, a determination is limited to a review of the procurement file, testimony from TTC and argument from Clegg's.¹

Regarding award of an IFB, the Consolidated Procurement Code requires that award of an IFB must be made to "the lowest responsive and responsible bidders whose bid meets the requirements of set forth in the invitation for bids." [11-35-1520(10)] A review of Carolina Exterminating's bid confirms Mr. Tyner's contention that Carolina Exterminating committed several extension (mathematical) errors while completing its bid; one of which was significant. Carolina Exterminating bid a price of \$92.57 per month and an extended annual price of \$111.09 for Building 600. Obviously, a monthly price of \$92.57 per month extends to an annual price of \$1,110.84 (\$92.57 per month x 12 months) for Building 600, not \$111.09. Correction of that error along with several other minor errors reveals that Carolina Exterminating actually bid a price of \$12,981.60, not \$11,981.33 as reflected on its bid or \$11,900 as stated in its protest letter. At a corrected price of \$12,981.60, Carolina Exterminating was not the lowest bidder. C-Mac Pest Control, Green's Exterminating and Clegg's submitted lower actual bids than Carolina Exterminating. After application of the preferences, Carolina Exterminating's adjusted bid was fourth. Therefore, the Code prohibits award to Carolina Exterminating.

¹ On December 15, 2008, the CPO mailed a hearing notice to Carolina Pest Control at Post Office Box 31883, Charleston, SC 29417, which is the correct address according to Carolina Exterminating's bid. [Ex. 4]

DETERMINATION

For failure to prosecute and the aforementioned reasons, the protest of Carolina
Exterminating is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

January 16, 2009

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

Martin, Deb

From: Protest-MMO
Sent: Friday, October 10, 2008 11:54 AM
To: _MMO - Procurement; Shealy, Voight
Subject: FW: Pest Control Protest

From: drew leilich[SMTP:BUGBITES1@GMAIL.COM]
Sent: Friday, October 10, 2008 11:54:11 AM
To: Protest-MMO
Subject: Pest Control Protest
Auto forwarded by a Rule

Chief Procurement Officer:

Carolina Exterminating submitted a bid for the pest control at Trident Technical College. Upon inspection of the property we submitted a bid for \$11,900. As part of the bidding process we were informed that the contract would be awarded to the lowest bidder. Since the closing of the bid in late September we were also informed that the contract was given to the company with a bid of \$12,800. Carolina Exterminating would like to know what procedures are needed to contest the winning bid as we did submit a much lower price. Thank you for the guidance.

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Sincerely,
Drew Leilich

President

WWW.CAROLINAEXTERMINATING.COM
Office 843-270-8587

10/27/2008